In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 1062

JOSEPH A. RISO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. 1-8) is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on December 27, 1968. A petition for rehearing was denied on January 20, 1969. The petition for a writ of certiorari was filed on February 18, 1969. The

jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether probable cause existed for the arrest of petitioner without a warrant and the incidental search of his vehicle.

2. Whether the indictment charged and the evidence showed that the stolen property was received while still in interstate commerce.

STATUTE INVOLVED

18 U.S.C. 2315 provides, in pertinent part:

> Whoever receives, conceals, stores, barters, sells, or disposes of any goods, wares, or merchandise, securities, or money of the value of $5,000 or more, or pledges or accepts as security for a loan any goods, wares, or merchandise, or securities, of the value of $500 or more, moving as, or which are a part of, or which constitute interstate or foreign commerce, knowing the same to have been stolen, unlawfully converted, or taken; * * *
>
> Shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

STATEMENT

After a jury trial in the United States District Court for the Northern District of Illinois, petitioner was convicted of receiving an oil painting worth more than $5,000, which was moving in interstate commerce, knowing the same to have been stolen, in

violation of 18 U.S.C. 2315. He was sentenced to imprisonment for eight years (A. 5, 20).[1]

On October 31 or November 1, 1965, an oil painting with a religious theme, valued at more than $5,000, was stolen from a Catholic college in Rensselaer, Indiana (A. 92, 159, 161, 174-175). On the morning of January 25, 1967, F.B.I. agents who were surveilling a picture frame shop in Chicago, just north of the Loop, saw a nun enter the shop carrying a flat package approximately 30 by 40 inches in dimension (A. 25-26, 28, 31-32, 92-95). The agent to whom the case was assigned and who was familiar with reproductions of the stolen painting passed in front of the shop. At a distance of from ten to fifteen feet, he saw the nun inside talking to a man. On a low counter between them next to a multi-colored blanket lay a painting which he recognized as the one which was missing (A. 33-37, 56, 64, 94-97). About an hour after the nun had entered the shop, she emerged, accompanied by a man in working clothes carrying a package which appeared to be the same as the one taken into the shop. The nun entered a taxicab and the package was placed on the back seat (A. 39-40, 98-99). The agents followed the cab to a Catholic church on the north side, where the nun got out and received the package from the driver. Shortly thereafter, petitioner drove up, parked his car next to the church and raised the trunk lid (A. 41-45, 81-82, 99, 100-102). The nun, after first taking the

---

[1] "A." refers to appellant's appendix in the court of appeals (pagination at bottom center of page).

package into an adjoining areaway, gave it to petitioner. As he prepared to place it in the trunk, one of the agents approached him and said, "FBI, Riso. You're under arrest. * * * You are being charged with interstate transportation of stolen property," at which point petitioner dropped the package into the trunk and slammed the lid shut (A. 48, 85, 105, 205-208). Petitioner was taken into custody and his rights explained to him. Petitioner said that nothing in the trunk belonged to him. The trunk was opened with a key taken from petitioner. Inside was the package which the nun had given him and a number of small packages addressed to him. The large package contained the missing painting, wrapped in the blanket which had earlier been observed in the frame shop (A. 97, 106-108, 110-112, 116, 122-123, 129). Petitioner said that he had found the large package on the sidewalk (A. 112). On the way to the F.B.I. office, petitioner volunteered that the nun was his cousin and that she had had nothing to do with this matter. He expressed his appreciation that she had not been detained and had been courteously treated (A. 113-114).

ARGUMENT

1. There was ample basis for petitioner's arrest without a warrant. The nun was known to be in possession of the stolen painting as the result of the agent's personal observation during her rather lengthy visit to the frame shop. The nature of the information which occasioned surveillance of both the shop and the church on the morning in question was not

revealed, apparently because of its confidential nature, but it is obvious from the steps taken that the agents expected the stolen painting to be transported on this particular day. Once the painting had been verified as the one missing from the Indiana college and it had been followed to the north side church, it was evident, when petitioner drove up and opened his car trunk even before meeting the nun, that he was expecting to receive the painting, as he did immediately thereafter. Circumstantial evidence may be sufficient to show knowledge that the goods in question are stolen. *Rugendorf* v. *United States*, 376 U.S. 528. The immediate arrest and recovery of the painting before petitioner could drive away was clearly proper. *Brinegar* v. *United States*, 338 U.S. 160; *Carroll* v. *United States*, 267 U.S. 132. Moreover, the agents had seen the package known to contain the missing painting before petitioner dropped it in the trunk and slammed the lid shut. Cf. *Harris* v. *United States*, 390 U.S. 234, 236; see Pet. App. 3-4.[2]

---

[2] Petitioner's subsequent actions, summarized in the Statement (*supra*, p. 4), were sufficient to show guilty knowledge without any reliance upon the traditional inference based upon possession of property recently stolen (see Pet. App. 6). His action in depositing the package in the trunk and slamming the lid closed when the agent called to him that he was under arrest, his falsely exculpatory statement that nothing in the trunk belonged to him, his statement that he had found the package on the sidewalk, as well as his volunteered statements to the agents on the way to the F.B.I. office, together with the other circumstances enumerated, provided more than a sufficient basis for the jury to infer that he knew that the painting was stolen (see Pet. App. 7-8).

2. The one-count indictment charged (A. 5):

> On or about January 25, 1967, at Chicago, in the Northern District of Illinois, Eastern Division, Joseph A. Riso, defendant herein, did receive and conceal goods, wares and merchandise of a value of Five Thousand Dollars ($5,000.00) or more, that is, a painting entitled, "The Virgin and Child with Saint Nicholas of Bari and a Donor", which such painting was moving as, was a part of and did constitute interstate commerce in that it had been transported from Rensselaer, Indiana to Chicago, Illinois, then and there knowing such painting to have been stolen, unlawfully converted and taken; in violation of Title 18, United States Code, Section 2315.

Petitioner, for the first time in this Court, contends that the indictment was fatally defective. He argues that the language, "in that it had been transported from Rensselaer, Indiana to Chicago, Illinois," negated federal jurisdiction since it showed that the painting was not moving in interstate commerce when received by him. Such language is not unusual in indictments under the statute. See *Lofland* v. *United States*, 357 F.2d 472, 474 (C.A. 9), certiorari denied, 385 U.S. 1026; *Corey* v. *United States*, 305 F.2d 232, 236 (C.A. 9), certiorari denied, 371 U.S. 956. The fact that transportation between States had occurred before the goods were unlawfully received does not establish that they were not still in interstate commerce. Nothing in the statute suggests that it was intended to be limited to cases where a future transportation to another State was contemplated. Certainly the indictment was sufficient to ad-

vise petitioner of the charge against him and to protect him against further prosecution on the same charge. *Hagner* v. *United States*, 285 U.S. 427, 431; *United States v. Debrow*, 346 U.S. 374, 376.

Petitioner extends this argument in discussing the existence of probable cause for his arrest and the sufficiency of the evidence, to urge that the fifteen-month interval between disappearance and reappearance of the painting indicated that it had come to rest in Illinois.[3] The question whether an interstate journey has come to an end is one of fact for the jury. *Pilgrim* v. *United States*, 266 F.2d 486, 488 (C.A. 5); *Schwachter* v. *United States*, 237 F.2d 640, 644 (C.A. 6); *Parsons* v. *United States*, 188 F.2d 878 (C.A. 5); *United States* v. *Gollin*, 166 F.2d 123 (C.A. 3), certiorari denied, 333 U.S. 875; *McNally* v. *Hill*, 69 F.2d 38, 40-41 (C.A. 3), affirmed, 293 U.S. 131; *United States* v. *Rocco*, 99 F. Supp. 746 (W.D. Pa.), opinion adopted, 193 F.2d 1008 (C.A. 3), certiorari denied, 343 U.S. 927. The facts of this case show that the painting was still in the process of disposition and thus had not come to rest when petitioner received it. The jury was justified in concluding that the painting was still in interstate commerce as part of a scheme ultimately to dispose of it some time after the notoriety of its theft had died down. See *Pearson* v. *United States*, 378 F. 2d 555 (C.A. 5).

---

[3] We do not find this question raised by petitioner's brief in the court of appeals; nor was the question discussed in that court's opinion (cf. Pet. App. 6-7, discussing whether the inference of guilty knowledge was appropriate in view of the fifteen-month interval).

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

WILL WILSON,
Assistant Attorney General.

BEATRICE ROSENBERG,
KIRBY W. PATTERSON,
Attorneys.

MARCH 1969.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1969 326433 254